

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7499 of 1991

WITH

SPECIAL CIVIL APPLICATION No. 7500 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

P. M. PATHAK

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 7499 of 1991 with
Special Civil Application No. 7500 of 1991
MR RJ OZA for Petitioner No. 1
MR MA BUKHARI, AGP for Respondent No. 1-2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 06/02/2003

COMMON ORAL JUDGEMENT

These two petitions are filed by two different petitioners against the common judgement and order passed

by the Gujarat Civil Services Tribunal on 22nd March, 1991 in Appeal Nos. 524/1989 and 586/1989, whereby the appeals filed by the present petitioners were dismissed. The tribunal has enhanced the punishment from stoppage of one increment without future effect to stoppage of two increments of both the petitioners with future effect.

2) Since the common issue is involved in both the petitions and since the order under challenge is common, both these petitions are being disposed of by this common judgement.

3) It is the case of the petitioners that the disciplinary authority i.e. respondent No.1 has passed an order dated 2-9-1989 imposing penalty of stoppage of one increment of the petitioners without future effect. The petitioners have challenged the said order before the Gujarat Civil Services Tribunal under the provisions of Section 11 of the Gujarat Civil Services Tribunal Act (hereinafter referred to as "the Act") raising several questions of law as well as fact in the said appeal and have also challenged the legality and validity of the order imposing penalty of stoppage of one increment without future effect.

4) The petitioners have received the reply filed by the respondent No.1 before the Tribunal wherein at more than one place it was submitted that the penalty of stoppage of one increment without future effect imposed upon the petitioners was just and reasonable. Despite these facts, the Tribunal in the said two appeals filed by the petitioners, passed order dated 9-2-1990 for issuance of show cause notice upon the petitioners calling upon them to file their explanation as to why the penalty imposed upon them by the respondent No.1 should not be enhanced. It was further stated in the said notice that the penalty imposed on the petitioners was grossly inadequate and therefore, it was expressly in the interest of justice to issue notice to the petitioners under the provisions of Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as "the Rules") to show cause why any of the major penalties under Rule 6(4) to (8) of the Rules should not be imposed after following due procedure under Rule 21 of the said Rules.

5) After receiving the said notice, the petitioners have filed a detailed reply on 15-6-1990 wherein it was specifically pointed out that the Tribunal has no jurisdiction to take suo motu cognizance and issue notice under the provisions of the Act. It was further pointed

out by the petitioners that Rule 21 of the Rules has no application nor the same is within the jurisdiction of the Tribunal. Despite the reply filed by the petitioners, raising certain preliminary contentions against the Tribunal's power with regard to the enhancement of the penalties imposed by the disciplinary authority, the Tribunal has passed an order on 22nd March, 1991 in the aforesaid appeals, inter alia, dismissing the appeals of the petitioners and imposing enhanced penalty of stoppage of two increments with future effect upon the petitioners.

6) It is this order, which is under challenge in the present petition.

7) Both these petitions are admitted by this Court on 24-11-1992. No affidavit-in-reply has been filed by the respondents in any of these two petitions. Mr.R.J.Oza, the learned advocate appearing for the petitioners in both these petitions, has submitted that the action of the respondent No.1 in imposing penalty of stoppage of one increment without future effect on the petitioners, as confirmed by the Tribunal, by dismissing their claim is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. He has further submitted that the Tribunal has committed a substantial error of law relating to the jurisdiction on the face of record by imposing enhanced penalty of stoppage of two increments with future effect upon the petitioners. It was submitted that the Tribunal has committed a grave error in taking the view that the Tribunal has all powers and functions of the Appellate Authority inclusive of those contained in Rule 21 of the Rules and Section 11 of the Act, which includes the power of suo motu enhanced penalty on the delinquent employee. He has further submitted that for the purpose of deciding the issue raised in the present petition, the relevant provisions as contained in Sections 10, 11 and 12 of the Act are required to be seen. The same are reproduced as under :

"10. Jurisdiction of the Tribunal :- The Tribunal shall have jurisdiction to hear and decide -
(a) appeals filed by specified civil servants under Section 11;
(b) any application filed by the State Government under Section 12;
(c) appeals and applications transferred to it under Section 21."

"11. Appeal by specified civil servants:-

- (1) Any specified civil servant aggrieved by an original or appellate order or decision of any officer or authority other than the State Government with respect to any of the matters specified in the Schedule may, within a period of ninety days from the date of such order or decision, appeal to the Tribunal against such order or decision, in a case where an appeal lies under law to the State Government :

Provided that an appeal against any such order or decision passed before the date on which the Tribunal is constituted under Section 3 may be filed within the period of ninety days as aforesaid or within a period of one month from such date, whichever period expires later :

Provided further that a specified civil servant to whom right to appeal under Sub-section (1) accrues as a result of the amendments made in this Act by the Gujarat Civil Services Tribunal (Amendment) Act, 1980 (hereinafter in this Act referred to as "the Amending Act" shall be entitled to file an appeal against any such order or decision passed before the date of the commencement of the Amending Act within the period of ninety days as aforesaid or within a period of one month from the aforesaid date, whichever period expires later.

- (2) No such appeal or an appeal transferred to it under Section 21 shall be decided by the Tribunal without giving to the officer or authority against whose order or decision it is filed, an opportunity of placing his or, as the case may be, its views before the Tribunal."

"12. Power of State Government to apply for modification, or annulment of order or decision.

- (1) Where it appears to the State Government that any order or decision of any officer or authority in relation to any specified civil servant with respect to any of the matters specified in the Schedule against which an appeal lies to the Tribunal under Section 11 requires to be modified, annulled or reversed -

- (i) on the ground that it is contrary to law, or
- (ii) on the ground that it is inconsistent with the material on record, or
- (iii) for any other sufficient reason in the

interest of justice,

the State Government may, within a period of ninety days from the date of such order or decision, make an application to the Tribunal to modify, annul or reverse such order or decision.

(2) No such application shall be decided by the Tribunal without notice being given to the civil servant concerned to appear and be heard in support of such order or decision."

On the basis of the aforesaid provisions, it was contended by Mr.Oza that the scope of Section 11 is limited only to the extent of deciding appeal filed by a civil servant for imposition of penalty described in Schedule to the said Act. It was further submitted that it is nowhere stated in Section 11 of the Act that the Tribunal is an appellate authority within the meaning of provisions of the Rules, and hence the Tribunal has no jurisdiction and power to take suo motu cognizance and enhance the penalty imposed by the competent authority.

8) It was further submitted that the scheme of the Act, more particularly the provisions of Section 10 read with Sections 11, 12 and 21 of the said Act envisages that power to apply for modification and annulment of order or decision is vested with the State Government under Section 12 of the said Act. It is further submitted that the Tribunal of its own cannot issue the notice for enhancement, such powers can be exercised by the Tribunal only upon an application moved by the State Government. Since in the case of the petitioners no such application was moved by the State Government, the Tribunal cannot issue the notice for enhancement and pass the order of enhancement of penalty.

9) Mr.Oza, therefore, submits that since the Tribunal is not empowered to enhance the penalty imposed by the disciplinary authority, the order of enhancement passed by the Tribunal is ex-facie illegal and deserves to be quashed and set aside.

10) He has also submitted that the order passed by the respondent No.1 for imposing penalty of stoppage of one increment without future effect is also contrary to the facts and evidence on record. Hence the Tribunal should have allowed the appeal filed by the petitioners.

11) Mr.Bukhari, learned Assistant Government Pleader appearing for the respondent has submitted that the order

of the Tribunal confirming the penalty imposed by the disciplinary authority as well as enhancing the penalty by awarding penalty of stoppage of two increments with future effect is absolutely just and proper and does not call for any interference. Mr. Bukhari has further submitted that before enhancing the penalty the Tribunal has followed the due procedure as laid down in the Act, as well as in the Rules. After issuance of notice to the petitioners and after taking into consideration their explanations and reply, the Tribunal has modified the order passed by the disciplinary authority and enhanced the penalty. The said order cannot be said to be unjust, improper, illegal or incorrect, looking to the provisions contained in the Act as well as Rules. He, therefore submitted that both the petitions deserve to be dismissed with cost.

12) After having heard the learned advocate Mr.Oza appearing for the petitioners and Mr.Bukhari, learned AGP for the respondent in both the matters and after having perused the orders passed by the disciplinary authority as well as by the Tribunal in the light of the provisions contained in the Act as well as Rules, I am of the view that the Tribunal is not justified in enhancing the penalty imposed by the disciplinary authority, while exercising the powers regarding enhancement, the Tribunal has observed that the Tribunal has all the powers and functions of the appellate authority inclusive of those contained in the Rules and in view of the express provisions of Section 11 of the Act read with Rule 21 of the Rules, the Tribunal can enhance the penalty. The interpretation put forward by the Tribunal of Rule 21 and Section 11 of the Act, does not appear to be correct as Section 11 of the Act does not confer any right on the Tribunal to enhance the penalty imposed by the disciplinary authority.

13) Rule 21 of the Rules confers the power on the appellate authority and the Tribunal not being an appellate authority, cannot be said that such powers are conferred on the Tribunal. Mr.Oza, the learned advocate for the petitioner has stated that there is no provision either in the Act or in the Rules, which empowers the Tribunal to enhance the penalty imposed by the disciplinary authority. He has further stated that once the disciplinary authority, after considering the facts and evidence on record, has come to the conclusion and imposed the penalty for stoppage of one increment without any future effect and once the order was sought to be justified before the Tribunal by filing affidavit-in-reply and by stating that the penalty

imposed on the delinquent employee is just, proper and reasonable, it is not open for the Tribunal to enhance such penalty.

14) Mr. Bukhari, learned AGP is not in a position to point out any provision which specifically confers such powers on the Tribunal. It is his submission that the Tribunal can suo motu exercise the powers with regard to enhancement over and above the application moved by the State Government before the Tribunal for any modification, annulment or reversal of the order. However, it is not borne out from the provisions contained in Section 12 of the Act. He has also not pointed out any authority which supports the interpretation put forward by him.

15) In the above view of the matter, the order regarding enhancement of the penalty of stoppage of two increments with future effect, passed by the Tribunal is hereby quashed and set aside. However, the order regarding stoppage of one increment without future effect passed by the respondent No.1, which is confirmed by the Tribunal by dismissing the appeal of the petitioner is hereby confirmed as the disciplinary authority has come to the said conclusion after appreciating the entire evidence on record and it is not open for this Court to interfere in the said finding of the disciplinary authority, which is confirmed by the Tribunal, especially when it was not pointed out that the said order was arbitrary, excessive and in violation of principles of natural justice or in any way contrary to the provisions of the Act or Rules. I, therefore, confirm the order regarding stoppage of one increment without future effect passed by the respondent No.1 and confirmed by the Tribunal.

16) In the result, both these petitions are partly allowed. Rule is made absolute to the above extent. Before parting with this matter it is to be noted here that the petitioners have retired some time in the year 1995/1996 and hence the respondent authorities are directed to give effect of this order forthwith so that their pensionary benefits may be suitably modified pursuant to this order.

(K.A.Puj, J.)

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